

§ 536.30

with specific facts substantiated by appropriate documentary evidence, reports of investigation, medical records or witness statements. Upon request, the claimant must:

(i) Provide the documentation required by paragraphs (a), (b) and (c) of this section;

(ii) Undergo necessary medical examinations;

(iii) Permit questioning of the claimant, his or her witness, and treating medical personnel;

(iv) Submit an expert opinion in a professional negligence action.

(2) Failure to comply with these requirements may provide a basis for denial of a claim, in full or in part.

(e) *Damages not payable.* The following damages are not payable in any claim arising under the Military Claims Act:

(1) Punitive or exemplary damages, including damages punitive in nature under 28 U.S.C. 2674.

(2) Interest on any claim settlement.

§ 536.30 Structured settlements.

(a) The use of the structured settlement device by approval and settlement authorities is encouraged in all appropriate cases. A structured settlement should not be used when contrary to the desires of the claimant.

(b) Notwithstanding the above, the Commander, USARCS may require or recommend to higher authority that an acceptable structured settlement be made a condition of award notwithstanding objection by the claimant or his or her representative where—

(1) Necessary to ensure adequate and secure care and compensation to a minor or otherwise incompetent claimant over a period of years;

(2) Where a trust device is necessary to ensure the long-term availability of funds for anticipated further medical care;

(3) Where the injured party's life expectancy cannot be reasonably determined.

§ 536.31 Claims over \$100,000.

Claims cognizable under 10 U.S.C. 2733 and §§ 536.20 through 536.35, which are meritorious in amounts in excess of \$100,000, will be forwarded to the Commander, USARCS who will negotiate a

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settlement subject to approval by the Secretary of the Army or designee, or require the claimant to state the lowest amount that will be acceptable and provide appropriate justification. Tender of a final offer by the Commander, USARCS constitutes an action subject to appeal. The Commander, USARCS will prepare a memorandum of law with recommendations and forward the claim to the Secretary of the Army, or designee, for final action. The Secretary or designee will either disapprove the claim or approve it in whole or in part.

§ 536.32 Settlement procedures.

(a) *Procedures.* Approval and settlement authorities will follow the procedures set forth in §§ 536.1 through 536.13 in paying, denying or making final offers on claims. A copy of the notification will be forwarded to Commander, USARCS. The settlement authority will notify the claimant by certified mail (return receipt registered) of a denial or final action and the reason therefore. The letter of notification will inform the claimant of the following:

(1) He or she may appeal, and that no form is prescribed for the appeal.

(2) The title of the authority who will act on the appeal and that the appeal will be addressed to the settlement authority who last acted on the claim.

(3) The claimant must fully set forth the grounds for appeal, or state that he or she appeals on the basis of the record as it exists at the time of denial or final offer.

(4) The appeal must be postmarked not later than 60 days after receipt of notice of action on the claim. If the 60th day falls on a day on which the post office is closed, the next day on which it is open for business will be considered the final day of the appeal period. The 60 day appeal period starts on the day following claimant's receipt of the letter from the settlement authority informing the claimant of the action taken and of the appellant rights. For good cause shown, the Commander, USARCS, or designee, or the chief of a command claims service (if the appellate authority), may extend the time for appeal, but normally such extension will not exceed 90 days.